



**DEPARTMENT OF DEFENSE**

**BILLING CODE 5001-06**

**Office of the Secretary**

**32 CFR Part 199**

**Docket ID: DOD-2011-HA-0035**

**RIN: 0720-AB49**

TRICARE; TRICARE Sanction Authority for Third-party Billing Agents

**AGENCY:** Office of the Secretary, Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This final rule will provide the Director, TRICARE Management Activity (TMA), or designee, with the authority to sanction third-party billing agents by invoking the administrative remedy of exclusion or suspension from the TRICARE program. Such sanctions may be invoked in situations involving fraud or abuse on the part of third-party billing agents that prepare or submit claims presented to TRICARE for payment.

**DATES:** *Effective date:* This rule is effective [INSERT 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Ms. Ann N. Fazzini, Medical Benefits and Reimbursement Branch, TMA, telephone, (303) 676-3803.

**SUPPLEMENTARY INFORMATION:**

**I. Executive Summary and Overview**

**A. Purpose of the Regulatory Action**

As stated in the proposed rule, TRICARE has regulatory authority under 32 Code of Federal Regulations (CFR) 199.9 to invoke sanctions in situations involving fraud or abuse on the part of providers of TRICARE services. A provider is defined in 32 CFR 199.2 as, “A

hospital or other institutional provider, a physician, or other individual professional provider, or other provider of services or supplies as specified in § 199.6 of this part.” Third-party billing agents do not meet the definition of a provider as stated in 32 CFR 199.2, nor do TRICARE regulations currently define third-party billing agents.

Title 42 of the CFR subpart C—Exclusions at 42 CFR 402.200(b)(1) provides for the imposition of an exclusion from the Medicare and Medicaid programs (and, where applicable, other Federal health care programs) against persons that violate the provisions provided in § 402.1(e) (and further described in § 402.1(c)). However, TRICARE had no independent regulatory authority to sanction or exclude third-party billing agents. This final rule provides that authority.

#### B. Summary of Major Provisions

This final rule establishes that such entities, when acting on behalf of a provider, are held to an equal standard in regard to accuracy and honesty when filing claims for services and supplies under the TRICARE program. As such, these entities should be subject to the same administrative controls applied to providers in ensuring that funds are disbursed appropriately. This rule will allow TRICARE to sanction third-party billing agents to prevent the payment of false or improper billings.

#### C. Summary of Costs and Benefits

By expanding the scope of sanctioning authority to include third-party billing agents, TRICARE costs are not anticipated to increase in this area. Rather, by expanding the sanctioning authority to include third-party billing agents in situations of fraud or abuse, the program is safeguarding benefit dollars from being expended for fraudulent or abusive charges. The anticipated result of this final rule is a savings benefit to the program.

## **II. Department of Defense Inspector General Report on TRICARE Controls Over Claims Prepared by Third-party Billing Agents**

The Department of Defense, Office of Inspector General (DoD IG) initiated an audit in February 2008 to review TRICARE controls over claims submitted by third-party billing agents (Department of Defense Inspector General Report No. D-2009-037—“TRICARE Controls Over Claims Prepared by Third-Party Billing Agencies”). The DoD IG published a report on December 31, 2008. The report included a recommendation that the Director, TMA strengthen internal controls by initiating action to obtain statutory or regulatory authority to sanction billing agencies or any entities that prepare or submit improper health care claims to TRICARE contractors.

## **III. Review of Public Comments**

In the Federal Register of September 20, 2011, (76 FR 58202), the Office of the Secretary of Defense published for public comment a Proposed Rule regarding sanction authority for third-party billing agents.

We received one comment on the proposed rule. The commenter recommended that the Code of Federal Regulations (CFR) rule be expanded to prohibit sanctioned providers or third party billing agents from pursuing collection activities against patients in the event that sanctions are implemented. We appreciate this comment and note that there is presently policy and regulations that address this issue. By their very nature, third-party billing agents have a contractual relationship with the health care provider that requires them to file claims on behalf of the provider. This should normally require that the third-party billing agreement meet the claims filing requirements of the entity or agency that would be paying the claim. In the case of a DoD beneficiary, claims must be filed in accordance with the Code of Federal Regulations,

including the requirements relating to the maximum allowable payments and any balance billing limitations. Additionally, TRICARE benefit payments are payable directly to the provider, not the third-party billing agent, as federal regulations prohibit the general assignment of claims. The agent has no independent right to payment from either TRICARE or the beneficiary.

Per 32 CFR 199.9(h)(4)(i)(c), participating providers are considered to have forfeited or waived any right or entitlement to bill TRICARE beneficiaries for care involved in claims for services furnished on or after the effective date of the provider's exclusion or suspension. As a result, any third-party billing agent purporting to act on behalf of a sanctioned provider would also be prohibited from billing TRICARE beneficiaries on behalf of that provider. Additionally, if the proposed authority to sanction third-party billing agents is invoked, a suspended or excluded third-party billing agent would also be prohibited from submitting a claim to TRICARE on behalf of any authorized provider or to bill any TRICARE beneficiary directly. Any claim received from an excluded third-party billing agent would be returned to the provider with instructions to resubmit the claim directly or through another third-party billing agent. As long as the provider of services has not been sanctioned and remains an authorized TRICARE provider pursuant to the requirements in 32 CFR 199.6, the provider remains entitled to reimbursement for covered services. Under either of these scenarios, TRICARE beneficiaries should not be subject to collection actions.

It is also important to note that the authority sought under the proposed rule to sanction third-party billing agents by invoking administrative remedies under 32 CFR 199.9 is in addition to, and not in lieu of, any other remedies or sanctions authorized by law or regulation, including potential criminal convictions and civil judgments for fraud and abuse.

#### **IV. Regulatory Procedures**

##### **Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”**

Sec. 801 of Title 5, United States Code (U.S.C.), and Executive Orders 12866 and 13563 require certain regulatory assessments and procedures for any major rule or significant regulatory action, defined as one that would result in an annual effect of \$100 million or more on the national economy of which would have other substantial impacts. This final rule is not a significant regulatory action.

##### **Public Law 104-4, Section 202, “Unfunded Mandates Reform Act”**

Section 202 of Public Law 104-4, “Unfunded Mandates Reform Act,” requires that an analysis be performed to determine whether any Federal mandate may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of \$100 million in any one year. It has been certified that this final rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector of \$100 million or more in any one year, and thus this rule is not subject to this requirement.

##### **Public Law 96-354, “Regulatory Flexibility Act” (RFA) (5 U.S.C. 601)**

Public Law 96-351, “Regulatory Flexibility Act” (RFA) (5 U.S.C. 601), requires each Federal agency to prepare a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This final rule is not an economically significant regulatory action, and it has been certified that it will not have a significant impact on a substantial number of small entities. Therefore, this final rule is not subject to the requirements of RFA.

## **Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)**

This final rule does not contain a “collection of information” requirement, and will not impose additional information collection requirement on the public under Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35).

## **Executive Order 13132, “Federalism”**

E.O. 13132, “Federalism,” requires that an impact analysis be performed to determine whether the rule has federalism implications that would have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. It has been certified that this final rule does not have federalism implications, as set forth in E.O. 13132.

## **List of Subjects in 32 CFR part 199**

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, DoD amends 32 CFR part 199 as follows:

### **PART 199 – CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS)**

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55

2. Section 199.2 is amended by adding in alphabetical order to paragraph (b), a definition of

“Third-party billing agent” to read as follows:

#### **§199.2 Definitions**

\* \* \* \* \*

(b) \* \* \*

Third-party billing agent. Any entity that acts on behalf of a provider to prepare, submit and monitor claims, excluding those entities that act solely as a collection agency.

\* \* \* \* \*

3. Section 199.9 is amended by adding paragraph (n) to read as follows:

**§199.9 Administrative remedies for fraud, abuse, and conflict of interest**

\* \* \* \* \*

(n) Third-party billing agents as defined in §199.2(b) of this part, while not considered providers, are subject to the provisions of this section to the same extent as such provisions apply to providers.

DATED: February 1, 2013.

Patricia L. Toppings  
OSD Federal Register Liaison Officer  
Department of Defense

[FR Doc. 2013-03416 Filed 02/25/2013 at 8:45 am; Publication Date: 02/26/2013]